IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

Bail Appl..No. 7311 of 2007()

CRIME NO. 528/07 OF MANNUTHY POLICE STATION

PETITIONERS

---

1. BERIN P.VARGHESE, AGED 22, STUDENT,
S/O.VARGHEESE.P.V., PARAMBATH,
BISMI VILLA, CHITTAR DESOM, CHITTAR P.O.,
SEETHATHODU VILLAGE, RANNI TALUK, PATHANAMTHITTA.

2. ARUN RAJ.M.R., AGED 23 YEARS,
STUDENT, S/O.RAJENDRAKUMAR.M.R.,
MEKKE MADAM HOUSE, KURUSUMOODE DESOM,
CHANGANASSERRY P.O., CHANGANASSERY VILLAGE,
CHANGANASSERY TALUK, KOTTAYAM.

3. ABIN BABY MATHEW, AGED 20, STUDENT,
S/O.BABY MATHEW, MAMATTIL COTTAGE,
ILAMAD DESOM, ILLAMAD P.O., ILLAMAD VILLAGE,
KOTTARAKKARA TALUK, KOLLAM.

4. ASIM.R., AGED 19, STUDENT,
S/O.A.RASHEED KUTTY, THOKKAVILA MELEFUN
HOUSE, NEERAVIL DESOM, PERUNAD P.O.,
KOLLAM TALUK, KOLLAM.

5. AJAS MUHAMMED.T.M., AGED 22, STUDENT,
S/O.T.K.MUHAMMED ISMAYIL, THANAMAKKAL HOUSE,
KANJIRAPPILLY VILLAGE, KANJIRAPPILLY DESOM,
KANJIRAPPILLY P.O., KANJIRAPPILLY TALUK,
KOTTAYAM.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS:

STATE OF KERALA (CRIME NO.528/2007
OF MANNUTHY POLICE STATION), REPRESENTED
BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY D.G.P. SRI. P.G. THAMBI

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 18/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

B.A.No. 7311 of 2007

- -

Dated this the 1..th day of December, 2007

O R D E R

A person attempts to commit suicide. He is culpably abetted by another to so commit suicide. Providentially he escapes and he does not die. Is the law helpless against the one, who abets the commission of suicide (I mean the attempt thereof) merely because the attempt was unsuccessful? Is he guilty of the offence punishable under Section 306 r/w. 511 I.P.C. or at least under Section 309 r/w. 116 I.P.C.? Or, is the law to throw its hands up and say that you can go on abetting; you can go on attempting to persuade or goad a person to commit suicide; you may succeed in your attempt to abet; he may attempt to commit suicide also; but ? if he does not die, you can go scot free. Can that be the law?

2. How serious is the law in its attempt to prevent ragging? Do we lack the societal, political, legislative and administrative

will to prevent ragging? Do we accept ragging as not serious enough that it can be left entirely to the managements, principals and Warden to tackle the problem? Why does ragging continue to be a non-cognizable, non-bailable offence in the statute nook, fettering considerably the effectiveness of the preventive action possible and the deterrence against commission of such offence of ragging?

3. These sets of questions, the former legally interesting and the latter socially disturbing, do arise for consideration in this bail application.

4. To the crucially vital and relevant alleged facts first. A young student with a rural background born of parents from the economically weaker section of the community achieved the dream of himself and his family. He secured admission to a State run professional college. This proved achiever with a lot of idealism in his young mind with trepidation walked into the professional college - the Government Veterinary College, Mannuthy. He joined the college on 9.10.2007. He was subjected to harrowing, humiliating, embarrassing and harassing attitude from his senior students. He was subjected to the

most inhuman methods of physical and mental torture that goes in the name of ragging. He went back to his house at the first available opportunity - on the 18th. He was forced to come back to the college on 22.10.2007 as he could not continue to be away any longer.

4. When he returned, he realised that he will not be able to avoid the harrowing experience any further. He was requisitioned to perform the debasing act of oral sex with his senior students. He was made of sterner stuff. He could not persuade himself to accept the practical philosophy - that if you cannot avoid getting raped, lie back and enjoy it. Realising that he cannot escape such experience any longer, he decided to leave a suicide note to a dear teacher of his and bid goodbye to this world. He attempted to commit suicide by cutting a vein on the wrist. As the good fortune of the parents would have it, he was taken to the hospital in time and his life was saved. The police have not so far initiated any proceedings under Section 309 I.P.C. against him. The conscience of the righteuous in and outside the campus was badly shaken. What action must be taken? How does civil society respond to this trauma? What can the law enforcement

machinery - the police - do in such a circumstance? These questions were raised.

5. The police officers found that certainly the offence of ragging punishable under Section 4 of the Kerala Prohibition of Ragging Act, 1998 was committed. But those offences are non-cognizable and bailable going by the schedule to the Code of Criminal Procedure. There is no stipulations otherwise in the Act. In these circumstances there was tentative attempts to make different allegations under Sections 306, 377, 377 r/w. 511 I.P.C. and finally under Section 306 r/w. 511 I.P.C.

6. After submissions were initially made by the learned D.G.P., who himself chose to appear in the matter, at his directions allegations are now raised of offences punishable, inter alia, under Section 306 r/w. 511 I.P.C. Factual allegations were always there. The dispute was only about the section of offence applicable. The petitioners are senior students of the said college. They apprehend that they may be arrested. They approached the learned Sessions Judge. At that time the allegation was raised only under Section 306 I.P.C. The learned

Sessions Judge observed that Section 306 I.P.C. has no play at all in the facts of the case. Apprehending that allegations of non-bailable offences may still be raised by altering the penal provisions, the petitioners have come to this Court again seeking directions under Section 438 Cr.P.C.

7. I have heard the learned counsel for the petitioners and the learned D.G.P. The learned counsel for t he petitioners builds up the claim for anticipatory bail for the petitioners on the following four planks.

(1) The petitioners have not been arrayed as accused so far by the Investigator and therefore they can be granted anticipatory bail.

(2) No worthwhile allegations have been made to indicate that there was any abetment of suicide or attempt thereof.

(3) At any rate, the attempt to abet suicide is not an offence punishable with the help of Section 306 I.P.C. at all.

(4) At worst, only an offence punishable under Section 309 r/w. 116 I.P.C. is made out, which is bailable.

8. I have rendered my very anxious consideration to all the four contentions raised. I must at the very outset remind myself of the nature, quality and contours of the jurisdiction of this Court under Section 438 Cr.P.C. It is an extra ordinary equitable discretion which is conferred on the superior Courts without any specific guidelines given under Section 438 Cr.P.C. to act in aid of justice. Under the Code of Criminal Procedure, offences are categorised into bailable and non-bailable offences. An order under Section 438 Cr.P.C. virtually converts a non-bailable offence declared by law to be a bailable one subject to conditions which may be imposed by the Court in its order. Such a discretion can and ought to be invoked only sparingly and in exceptional cases. Unless there are satisfactory and compelling reasons, such jurisdiction cannot and should not be invoked as a matter of course. Even the fact that after arrest if the accused approach the court under Section 439 Cr.P.C., bail may be granted to them, is no reason for the Court to invoke the extra ordinary equitable discretion under Section 438 Cr.P.C. When the powers of arrest are about to be misused or used malafide or with oblique motives or when

the exercise of the powers of arrest though not actuated by oblique motives or malafides would still result in prejudice and inconvenience of an exceptional variety, which must be avoided in the interests of justice, shall such jurisdiction be invoked.

9. Having thus reminded myself of the nature, quality and contours of jurisdiction under Section 438 Cr.P.C., I shall now proceed to consider the four contentions raised.

10. The petitioners have not been arrayed as accused so far admittedly. The learned D.G.P. submits that the available inputs show that the needle of suspicion is pointed at the petitioners convincingly. Arrest shall be effected only after test identification parade is conducted and satisfactory legally cognizable data is collected against the petitioners. The petitioners have to be interrogated. Attempts shall have to be made to get them identified by the victim in accordance with law and only thereafter arrest proper will be effected. The fact that the petitioners may not be arrested at the next moment, hour or day is by itself not a valid reason to justify the claim for anticipatory bail, submits the learned D.G.P. I find merit in the

submissions of the learned D.G.P. that the mere fact that the petitioners in this case have not been formally arrayed as accused persons is no reason sufficient to concede to them the right to claim anticipatory bail. The first contention raised cannot therefore succeed.

11. Strenuous arguments are advanced as to what in law (u/s. 511 I.P.C.) can constitute a culpable attempt. It is unnecessary to advert to precedents which have been cited copiously at the Bar. The distinction between the commission of an offence proper and an attempt to commit such offence is very clear and well delineated by binding precedents. A person must first entertain the requisite intention. He must then make preparations to commit the offence. Having made preparations he must take the next and the last move towards the commission of the offence and it is then that he attempts to commit an offence. If he succeeds, he commits the offence and if he does not succeed, he only attempts to commit the offence. He can then be punished with the aid of Section 511 I.P.C.

12. Copious arguments have been advanced and precedents cited at the Bar as to what would constitute an abetment. The law

here also is well settled and it is unnecessary to advert specifically to the precedents cited. A person abets an act when he prompts, encourages, assists or goads another to commit such act. Certainly an abetter must intend that such other person must commit that act. The question of intention must depend on the totality of facts and circumstances. Even the devil cannot fathom the depths and working of the human mind. Knowledge of the consequence and an act with such knowledge of the consequence, in the absence of other circumstances, may legitimately raise the presumption regarding the requisite culpable intention. Every person must normally be assumed to intend the reasonable consequences of his conduct which he knows and is aware of. At the stage of grant of anticipatory bail, when the entire evidence has not been collected, it would be puerile for a court to come to a conclusion that the alleged offenders do not have the requisite culpable intention. That aspect certainly deserves to be probed into in detail. Ultimately at the stage of weighing the evidence in golden scales the indictee will be entitled to claim of benefits which arise from reasonable doubt. At the stage of bail or anticipatory bail

such deep consideration of the materials is not necessary or possible. At the early stage of grant of anticipatory and regular bail a criminal court must scrupulously avoid any detailed discussion on merits about the acceptability of the allegations raised or credibility of the data collected. I shall only mention that I have gone through the materials presently available in the case diary. I am of the opinion that sufficient materials have been collected, which must prompt the Investigator to investigate further into the question whether the alleged offenders in this case had committed the offence of attempting to abet the commission of suicide in this case. At any rate, there is no sufficient materials available at the moment for the Court to come to the conclusion that if the unfortunate victim/student had actually committed suicide, whoever abetted the commission of suicide would not have been culpably liable.

13. That takes me perhaps to the most important question raised as questions 3 and 4 referred above. Can a person attempt to abet commission of suicide? Can a person abet the attempt to commit suicide? If the same are legally possible, would a person who abets

the commission of suicide be liable to be proceeded under Section 306 r/w. 511 I.P.C. or Section 309 r/w. 116 I.P.C. when the person abetted attempts to commit suicide, but does not succeed. These are the vital questions to be considered here.

14. Whether Section 309 I.P.C. can at all be an offence has been the subject matter of discussion by the Constitutional Courts on many occasions. In theology, in morality and in law, suicide has always been reckoned as impermissible whatever be the justification for such perception. The law does not, of course, make commission of suicide punishable. Commission of suicide is not made punishable not because the commission of suicide is not culpable, but because the person culpably responsible would have departed from this world before he can face any indictment. The assumption that suicide is not punishable and therefore abetment to commit suicide cannot be made punishable has been rejected for a long long time. Penal law can make punishable not only abetment of an offence but also abetment of any act. The law reckons commission of suicide and attempt to commit suicide to be totally different, from the point of culpability, from

abetment or the attempt to abet the commission of suicide. The law in Section 309 deals softly with a person who has attempted to commit suicide. Whereas, abetment of commission of suicide is viewed very seriously by law. Under Section 309 I.P.C. attempt to commit suicide is punishable with imprisonment for a period of one year or with fine or with both. Borrowing the rationale of Section 511 I.P.C. commission of suicide must hence be held to be an offence, which must have been punishable with imprisonment for a period of two years. But the abetment of commission of suicide, going by Section 306 I.P.C., is punishable with imprisonment for a period of 10 years and fine. I am only trying to look at the provisions to objectively conclude that abetment to commit suicide is reckoned by law as qualitatively different from commission of suicide or the attempt to commit suicide. In a case of suicide, English Coroner originally would have reckoned the cause of death as the act of a person who was temporarily insane. The Indian law also appears to effectively accept that commission of suicide and attempt to commit suicide are acts in a state of temporary mental disturbance of the offender and

consequently qualitatively different from the offence of abetment to commit suicide.

15. The argument is, going by the language of Section 306 I.P.C., where suicide has not actually taken place, Section 306 I.P.C. is not applicable at all. In a case where there is an unsuccessful attempt to commit suicide, Section 306 I.P.C. cannot at all be pressed into service to sustain any indictment - even with the help of Section 116 or 511 I.P.C.

16. Reliance is placed on the decisions of the Punjab and Haryana High Court in **Satvir Singh** v. **State of Punjab** (1998 Crl.L.J. 405) as also the Supreme Court in **Satvir Singh** v. **State of Punjab** (2001) 8 SCC 633). In particular reliance is placed in paragraphs 7 and 8 of the decision of the Supreme Court in **Satvir Singh**, which I extract below:

> "7. At the outset, we may point out that on the aforesaid facts no offence linked with Section 306 Indian Penal Code can be found against any of the appellants. The said section penalises abetment of suicide. It is worded thus:

> "If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extent to ten years, and shall also be liable to fine."

It is a unique legal phenomenon in the Indian Penal Code that the only act, the attempt of which alone will become an offence. The person who attempts to commit suicide is guilty of the offence under Section 309 Indian Penal Code whereas the person who committed suicide cannot be reached at all. Section 306 renders the person who abets the commission of suicide punishable for which the condition precedent is that suicide should necessarily have been committed. It is possible to abet the commission of suicide. But nobody would abet a mere attempt to commit suicide. It would be preposterous if law could afford to penalise an abetment to the offence of mere attempt to commit suicide.

8. Learned Sessions Judge went wrong in convincing the appellants under Section 116 linked with Section 306 Indian Penal Code. The former is "abetment of offence punishable with imprisonment - if offence be not committed." But the crux of the offence under Section 306 itself is abetment. In other words, if there is no abetment

there is no question of the offence under Section 306 coming into play. It is inconceivable to have abetment of an abetment. Hence there cannot be an offence under Section 116 read with Section 306 Indian Penal Code. Therefore, the High Court was correct in altering the conviction from the penalising provisions fastened with the appellants by the Sessions Court."

(emphasis supplied).

17. I am afraid, I am unable to accept the argument that the Supreme Court has laid down that under no circumstance an offence under Section 306 r/w. 511 I.P.C. can be committed. I have carefully gone through the above paragraphs 7 and 8. The Supreme Court did not have occasion to consider whether a conviction for an offence of attempt to abet the commission of suicide is punishable under Section 306 r/w. 511 I.P.C. The Supreme Court has clearly held that there cannot be an abetment of an attempt to commit suicide and that there cannot also be abetment of abetment to commit suicide. But significantly the passages referred above do not at all show that the

Supreme Court has taken the view that an attempt to commit the offence under Section 306 I.P.C. is impossible.

18. In principle also, I am afraid that such a conclusion cannot be reached. The history of use of the provisions of Section 309 shows that the section has been pressed into service primarily in case of Sathi, where the widow commits suicide and others have various reasons - economic and social, to abet such hapless woman to commit suicide. Law has to serve its purpose. To hold that a person can go on abetting commission of suicide, but his conduct will not be culpable if the offence of suicide proper is not committed, would certainly defeat the purpose of the law. Such ad absurdam construction must certainly be avoided, if possible. The interpreter also has a responsibility to ensure that the law serves its purposes and the interpretation does not lead to irrational, unreasonable, perverse and absurd results. If a hapless victim is goaded to commit suicide and the abetters abet her to jump into the funeral pyre of her husband, it would be preposterous for law to hold the abetters not guilty of any offence merely because she escapes or is saved from death later.

19. A look at the language of Section 306 I.P.C. will, in this context, be relevant.

> **Section 306: Abetment of suicide:-** If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

The section starts with the words "if any person commits suicide". The argument is that if the person does not commit suicide successfully, the section has no application at all. I am afraid that would be a myopic view of the section of offence. To me it appears that Section 307 I.P.C. read reasonably has to be understood in the following manner.

> "Whoever abets the commission of any suicide shall be punished, if such person commits suicide, with imprisonment of either description for a term which may extend to 10 years and shall also be liable to pay fine."

20. Merely because the section opens with the words "if any person commits suicide" it cannot be held that in a case of

unsuccessful suicide there is no attempt to abet the commission of suicide. The abetment becomes complete only when suicide is committed and Section 306 I.P.C. principally would come into operation only when suicide successfully takes place.

21. Under the general principle of law embodied in Section 511 I.P.C. every offence can be attempted also. In jurisprudential theory intention, preparation, attempt and commission are the four specific stages of commission of every crime. From principle and precedent I am unable to accept the theory that so far as the offence under section 306 I.P.C. is concerned, this third step/phase must be held to be absent and non-existent in all cases. I take the view that an attempt to commit the offence under Section 306 I.P.C. is certainly possible and there is no warrant for the presumption that there cannot ever be a conviction for an offence under Section 306 r/w. 511 I.P.C. If a person abets the commission of suicide and the abetment does not succeed and fructify into a completed offence under Section 306 I.P.C. it mus, according to me certainly, be held to fall within the sweep of Section 306 r/w. 511 I.P.C.

22. It is lastly contended that in any view of the matter, when the same offence is punishable under two sections, accused can be forced to suffer the punishment only for the less serious offence. It is contended that attempt to commit suicide can be abetted and therefore at worst the offence would fall only under Section 309 r/w. 116 I.P.C. The offence then be punishable only with imprisonment of three months and consequently in any view of the matter, the offence would be bailable. Therefore anticipatory bail is only to be granted, it is submitted.

23. In this context I take note of the observations of the Supreme Court in **Satvir Singh** extracted above, which shows that abetment of a mere attempt to commit suicide would be preposterous. The abetment undoubtedly was for commission of suicide and a mere abetment of the attempt to commit suicide cannot be held to be made out. More over, I must further note, as stated earlier, that the content and character of an offence of attempt to commit suicide is qualitatively different from the attempt to abet the commission of suicide. Suicide and its attempt on the one hand and abetment of commission of suicide

and its attempt on the other are treated differently by law and therefore the one who abets the commission of an unsuccessful attempt to commit suicide cannot be held to be punishable merely under Section 309 r/w. 116 I.P.C. To implement the scheme of law he has got to be held to be punishable under Section 306 r/w. 511 I.P.C.

24. In the above view of the matter, I am of the opinion that the miscreants, against whom allegations are raised under Section 306 r/w. 511 I.P.C. that they attempted the abetment to commit suicide by the unfortunate victim in this case can legitimately be proceeded against under Section 306 r/w. 511 I.P.C. and there is no inherent legal defect, infirmity or impossibility in such prosecution.

25. I do not venture to hazard an opinion as to whether sufficient materials can be collected in this case to justify an indictment under Section 306 r/w. 511 I.P.C. I am satisfied that the investigation can and must certainly continue and depending on the materials collected, the police can initiate such indictment, if necessary.

26. The upshot of the above discussions is that an offence of attempt to commit the offence under Section 306 I.P.C. is not an

impossibility of syllogism and steps for prosecution can certainly be initiated and successfully completed against the miscreants for such offences depending on the evidence in a given case.

27. The miscreants, whoever they be, are alleged to have committed the offence of ragging defined and punishable under the Kerala Prohibition of Ragging Act, 1998. The bane of ragging has been polluting the atmosphere in the professional college campuses of this country for a long period of time. Nay, the vice has even crept into other colleges, it is reported. Acts of violence, mischief, harassment, humiliation etc. - not to speak of physical and mental torture inflicted on the novice in the campus come under the expression 'ragging'.

28. The offence of ragging has been causing concern to the enlightened members of the polity for a long period of time. The attention of the Courts as well as the Legislature have been drawn to this pernicious vice. The young students cannot be permitted to indulge in such vice for many reasons. First of all, the evil effect of ragging has led to deaths - suicide or otherwise, in many a campus. Even when such extreme consequence does not result, the scars which

it creates in young minds is itself there for the whole life thereafter. The mind sets which do come into existence as a result of such ragging is again disturbing. The humanist professional of tomorrow cannot be moulded if he is forced to endure such vice now and is permitted to indulge in such vice later. What is most disturbing is that todays victim, who has been denied justice, becomes tomorrows tormentor. The inability to react to injustice creates a mind set which wants to indulge in the same injustice next year. I have no doubt that the prevention of ragging must now be held to be too serious a business to be left to the managements and principles of the colleges alone. The organised conscience of the community has to react. The sublime civil society has to intervene effectively to prevent such ragging in our campuses. Strong legislative action supported by effective executive enforcement and judicial interpretation can certainly help us to prevent this vice. The war against ragging must certainly demand sustained efforts atleast for five long years so that there will be no one in the campus, who has been subjected to such injustice and vice, who gets prompted by a sickening desire to return such injustice to next

generation of students. Not isolated skirmishes or battles, the State has to undertake a minimum five year war on ragging to exterminate and eliminate this vice from our campuses.

29. The history of the bar against ragging in the campus reveals that there has been no determined and positive action. I have gone through the provisions of Kerala Prevention of Ragging Act. The offence is non-cognizable and bailable. The system cannot expect the impossible from the police force. If you expect them to fight against ragging on behalf of the sublime polity of this country, they have to be equipped with necessary legal weapons. It passes my comprehension as to why ragging continues to be a non-cognizable and bailable offence under the schedule to the Code of Criminal Procedure without any specific provision in the Act itself. Determined action is required and the legislature must not be found wanting in arming and equiping the police with necessary legal weapons. The arms of the State - Legislature, Executive and Judiciary, cannot be found wanting in the efforts to prevent such vice in our campuses.

30. The learned D.G.P. submits that the State is seriously thinking of giving more teeth to the provisions of the Kerala Prohibition of Ragging Act, 1996 so that the police can intervene effectively. Campuses are not zones which are out of bounds for law and law enforcement functionaries. A system cannot lull itself into complacency in the name of academic independence. Academic independence must be in the realm of thought and not in perpetuating such shameless practices that go on unabated within the campuses. There cannot be any haven in this country where law cannot enter. Be it campus, temple, church or mosque the message must go loud and clear, that law shall enter and present crimes, when it becomes essential. I expect that the State shall, as promised by the learned D.G.P., take effective action so that atleast in Kerala we can in the near future within a period of five years at any rate see the end of this pernicious practice in the academic campus.

30. This bail applicable is, in these circumstances, dismissed.

(R. BASANT)
tm Judgetm